

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 303, FOOD AND DRUGS ACT.

MISBRANDING OF METABOLIZED COD LIVER OIL COMPOUND.

On or about September 30, 1909, the H. W. St. Johns Company, of New York, N. Y., shipped from the State of New York to the District of Columbia thirty-six cases of metabolized cod liver oil compound. Analyses of samples of this product were made by the Bureau of Chemistry, United States Department of Agriculture, and as it appeared from the findings of the analysts and reports thereon that the product was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture reported the facts to the United States Attorney for the District of Columbia. In due course a libel was filed against the said thirty-six cases of metabolized cod liver oil compound, charging misbranding within the meaning of the Act because they were labeled "Waterbury Chemical Co. Metabolized Cod Liver Oil Compound * * * ", and also bore the following statements on the labels of the retail packages and upon circulars accompanying the same: "Waterbury's Metabolized Cod Liver Oil Compound does contain Cod Liver Oil;" "Many of these (institutions) are using it exclusively as the one general tonic and tissue builder;" "Blue Wrapper indicates product without antiseptic;" which said statements were exaggerated, false, and misleading in this, that the said product contained no material part derived from cod liver oil due to metabolic changes, and further, in that the said product contained no cod liver oil, and further, in that the said product was not such that it could be a tissue builder and that it was not a tissue builder, and further, in that the said product contained in the bottles wrapped as aforesaid in the blue wrapper contained an article which was an antiseptic, to wit, salicylic acid.

In response to this libel the Waterbury Chemical Company, of Des Moines, Iowa, entered its appearance, set up a claim to the goods, and

filed an answer, together with certain interrogatories, on November 4, 1909, and subsequently, on November 24, 1909, filed an amended answer. To this answer and to the answer as amended the Government filed certain exceptions, as follows:

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. HOLDING A DISTRICT COURT.

UNITED STATES OF AMERICA, <i>Libelant</i> ,	}	District No. 849.
<i>vs.</i>		
THIRTY-SIX CASES, MORE OR LESS, OF "METABOLIZED COD LIVER		
Oil Compound."		

Now comes Daniel W. Baker, Attorney of the United States in and for the District of Columbia, and excepts to the answer of The Waterbury Chemical Company, a corporation, filed herein, and for grounds therefore shows:

1. The claimant herein has not made due answer to that portion of the libel in which it is alleged that said product contains no cod liver oil.

2. The claimant has not made due answer to that portion of the libel in which it is alleged that said product is not such that it could be a tissue builder, and that it is not a tissue builder.

3. The claimant has not made due answer to that portion of the libel in which it is alleged that certain bottles wrapped in blue wrapper contain a product which is anti-septic, that is to say, contain salicylic acid.

4. In that the claimant attempts to set up as matter of defense that there never had been any examination of samples of said articles, or analysis of said articles, as provided in Section 4 of the Act of Congress approved June 30, 1906, or as provided in regulations 3 and 4 of the Rules and Regulations made and prescribed pursuant to the provisions of Section 3 of said Act.

5. In that the claimant attempts to set up as matter of defense that he had no notice or opportunity to be heard as provided in Sections 4 and 5 of said Act of Congress approved June 30, 1906, or the rules and regulations made in pursuance to the provisions of said Act.

6. In that the claimant attempts to set up as matter of defense that no notice or copy of the results of any analysis have been given to the Attorney of the United States as provided in Section 4 of said Act approved June 30, 1906, and that this proceeding was taken by the said Attorney of the United States on his own motion and not by direction of the Secretary of Agriculture.

7. In that the claimant attempts to allege as matter of defense that the evidence purporting to show the alleged violation of the law had never been submitted to the Secretary of Agriculture, as provided in Sections 4 and 5 of the said Act of Congress approved June 30, 1906, and the rules and regulations made under said Act.

8. In that the claimant in interrogatories numbers 1, 2, 3, and 4 attached to the answer, inquires of matters which are immaterial and irrelevant in this proceeding, and relate to section 4 of the Act of Congress approved June 30, 1906, which is not applicable to a seizure of goods.

9. In that the claimant in interrogatories numbers 5, 6, and 7, propounds questions which relate exclusively to the evidence which the United States has collected and expects to offer at the hearing of this cause, and are not such matters as the claimant is entitled to ascertain in advance of the hearing.

DANIEL W. BAKER,
Attorney of the United States in and for the District of Columbia.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. HOLDING A DISTRICT COURT.

UNITED STATES	}	District No. 849.
<i>vs.</i>		
36 CASES OF METABOLIZED COD LIVER OIL COMPOUND.		

EXCEPTIONS TO AMENDED ANSWER.

Now comes Daniel W. Baker, Attorney of the United States in and for the District of Columbia, and excepts to the answer and the amendment to the answer of the Waterbury Chemical Company, a corporation, filed herein and for grounds thereof shows in addition to those grounds set forth in the exceptions heretofore filed:

A. In that the Waterbury Chemical Company in paragraph sixth of its amendment to the answer sets up no matter of fact or law sufficient to defeat the purposes of this law or the libel filed herein.

B. In that the answer and the amendment to the answer are defective in law and in substance upon other grounds.

DANIEL W. BAKER,
Attorney of the United States in and for the District of Columbia.

On January 7, 1910, the case came on for argument on the exceptions to the answer, as amended, and the court rendered its decision, in substance and form as follows:

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING A DISTRICT COURT.

UNITED STATES OF AMERICA, <i>Libellant,</i>	}	District No. 849.
<i>vs.</i>		
36 CASES, MORE OR LESS, OF METABOLIZED COD LIVER OIL Compound, <i>Libellee.</i>		

WASHINGTON, D. C.,
January 7, 1910, 10 o'clock, a. m.

This cause having been heard upon libellant's exceptions to libellee's answer, the questions thereby raised are now disposed of as follows:

The first exception is overruled on the ground that the answer does expressly deny that the product contains no material part derived from cod liver oil due to metabolic changes, and therefore raises an issue of fact to be submitted to the jury.

The second exception is overruled upon the ground that the answer does expressly deny the allegation of the libellee which states that the product is not a tissue builder, and therefore presents an issue to be submitted to the jury.

The third exception is overruled because it is considered that the answer raises the question of fact whether the product in blue wrapper does contain any antiseptic within the fair meaning of the term as used upon the blue wrapper.

The fourth, fifth, sixth, seventh, eighth and ninth exceptions are sustained upon the ground that the matters in the answer therein excepted to are either immaterial and insufficient in law, or relate merely to matters of evidence which the defendant is not entitled to require from the libellant at this stage of the case.

The libellant's exceptions to the amended answer are sustained on the ground that the portions of the answer therein excepted to are insufficient in law.

WENDELL P. STAFFORD,
Justice.

Exception by Libellee to that part of the order sustaining exceptions of Libellant.
Notice of appeal by Libellee.

On March 25, 1910, the case came on for hearing on libel and answer, the defendant having waived a jury, and, after hearing the testimony and argument of counsel, the court rendered its decree of condemnation and forfeiture, and directed that the goods be released to the claimant on payment of costs and the filing of a bond to be approved by the court, conditioned that the product should not be sold or otherwise disposed of contrary to the laws of the United States.

On April 15, 1910, the defendant entered an appeal to the Court of Appeals and filed a supersedeas bond.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *April 26, 1910.*